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Mary Cannon t/a Enviro-Tech and Laborers' Local 332, Laborers International Union of North America, AFL-CIO. Cases 4-CA-33146 and 4-CA-33227

September 30, 2004

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS WALSH AND
MEISBURG

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the consolidated complaint. Upon charges filed by the Union in Case 4-CA-33146 on June 14, 2004, and in Case 4-CA-33227 on July 20, 2004, the General Counsel issued the consolidated complaint (complaint) on July 30, 2004, against Mary Cannon t/a Enviro-Tech, the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the Act. The Respondent failed to file an answer.

On August 26, 2004, the General Counsel filed a Motion for Default Judgment with the Board. On August 30, 2004, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was filed by August 13, 2004, all the allegations in the complaint would be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated August 13, 2004, notified the Respondent that unless an answer was received by August 20, 2004, a motion for default judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a sole proprietorship with an office at 1735 Market Street, Suite 418, Philadelphia, Pennsylvania, has been engaged in performing cleaning and demolition services for businesses.

During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations described above, received in excess of \$50,000 to perform cleaning and demolition services for 2700 North Broad Street, LLP, a limited liability company within the Commonwealth of Pennsylvania located at 2700 North Broad Street, Philadelphia, Pennsylvania (the jobsite). At all material times, 2700 North Broad Street Corp., a New York corporation, has been the general partner of 2700 North Broad Street, LLP.

During the same period, 2700 North Broad Street, LLP and its general partner, 2700 North Broad Street Corp., purchased and received services valued in excess of \$50,000 directly from points outside the Commonwealth of Pennsylvania.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Laborers' Local 332, Laborers International Union of North America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Mary Cannon and Mark Cannon have been the Respondent's owner and general manager, respectively, and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act.

On or about the dates listed below, the Respondent, by Mary Cannon, engaged in the following conduct:

(a) With Mark Cannon, on numerous occasions during the month of February 2004, at the jobsite, forbade an employee from talking to union picketers who were outside the jobsite.

(b) In late February 2004, outside the jobsite, threatened to discharge employees if she "caught anyone outside the building talking to anybody from the Union."

(c) In late February 2004, at the jobsite, threatened an employee with discharge if the employee had conversations with the Union.

(d) On at least 10 occasions during the period from early March through May 14, 2004, at the jobsite, told an employee to stay away from the Union and that she didn't "want to ever catch [the employee] talking to the Union."

(e) With Mark Cannon, at the beginning of May 2004, at the jobsite, interrogated an employee concerning the employee's union activities and the union activities of other employees.

(f) In mid-May 2004, at the jobsite: (1) interrogated an employee concerning the employee's union sympathies and the union sympathies of other employees; (2) threatened to discharge the employee and other employees if they continued to have discussions with the Union; and (3) created the impression among its employees that their union activities were under surveillance by telling the employee that she knew that other employees were whispering to the employee about the Union and that she knew what they were whispering.

(g) With Mark Cannon, twice per week during the period from mid-May 2004 through June 13, 2004, interrogated an employee concerning the employee's union activities and the union activities of other employees.

(h) On or about June 12, 2004, at the Kearney School at 7th and Fairmount Streets, Philadelphia, Pennsylvania: (1) interrogated an employee concerning the employee's union activities and the union activities of other employees; and (2) told the employee that no one would be given work until she "straighten[ed] out this mess" with the Union.

On or about May 14, 2004, the Respondent, by Mark Cannon, at the jobsite, interrogated an employee concerning the union activities of another employee.

On or about the dates listed opposite their respective names, the Respondent terminated its employment of the following employees:

Bryan Smith	-	May 14, 2004
Darnell Coulbourne	-	May 14, 2004
Phil Burton	-	June 12, 2004
Joseph Campbell	-	June 18, 2004

The Respondent discharged Smith, Coulbourne, Burton, and Campbell because its employees, including those four, were seeking union representation.

CONCLUSIONS OF LAW

1. By the conduct and statements by Mary Cannon and Mark Cannon described above, the Respondent has interfered with, restrained and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act.

2. By discharging employees Bryan Smith, Darnell Coulbourne, Phil Burton, and Joseph Campbell, the Respondent has discriminated in regard to the hire or tenure or terms and conditions of employment of its employees,

thereby discouraging membership in a labor organization, in violation of Section 8(a)(3) and (1) of the Act.

The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging Bryan Smith, Darnell Coulbourne, Phil Burton, and Joseph Campbell, we shall order the Respondent to offer the discriminatees full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

The Respondent shall also be required to remove from its files all references to the unlawful discharges of Smith, Coulbourne, Burton, and Campbell, and to notify them in writing that this has been done and that the discharges will not be used against them in any way.

ORDER

The National Labor Relations Board orders that the Respondent, Mary Cannon t/a Enviro-Tech, Philadelphia, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging employees because they seek union representation.

(b) Forbidding employees from talking to union picketers.

(c) Threatening to discharge employees for talking to union representatives.

(d) Telling employees to stay away from Laborers' Local 332, Laborers International Union of North America, AFL-CIO, or any other labor organization.

(e) Interrogating employees concerning their union activities and sympathies, and the union activities and sympathies of other employees.

(f) Threatening to withhold work from employees until the Respondent "straightened out this mess" with the Union.

(g) Creating the impression among employees that their union activities are under surveillance.

(h) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Bryan Smith, Darnell Coulbourne, Phil Burton, and Joseph Campbell full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed.

(b) Make whole Bryan Smith, Darnell Coulbourne, Phil Burton, and Joseph Campbell for any loss of earnings and other benefits resulting from their unlawful discharges, with interest, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files all references to the unlawful discharges of Bryan Smith, Darnell Coulbourne, Phil Burton, and Joseph Campbell, and within 3 days thereafter, notify them in writing that this has been done and that the unlawful discharges will not be used against them in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Philadelphia, Pennsylvania, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees em-

ployed by the Respondent at any time since February 2004.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., September 30, 2004

Robert J. Battista,	Chairman
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Dennis P. Walsh,	Member
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Ronald Meisburg,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the

National Labor Relations Board

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT discharge employees because they seek union representation.

WE WILL NOT forbid you from talking to union picketers.

WE WILL NOT threaten to discharge you for talking to union representatives.

WE WILL NOT tell you to stay away from the Laborers' Local 332, Laborers International Union of North America, AFL-CIO, or any other labor organization.

WE WILL NOT interrogate you concerning your union activities and sympathies, and the union activities and sympathies of other employees.

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT threaten to withhold work from you until we “straighten out this mess” with the Union.

WE WILL NOT create the impression among you that your union activities are under surveillance.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board’s Order, offer Bryan Smith, Darnell Coulbourne, Phil Burton, and Joseph Campbell full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed.

WE WILL make whole Bryan Smith, Darnell Coulbourne, Phil Burton, and Joseph Campbell for any loss of earnings and other benefits resulting from their unlawful discharges, with interest.

WE WILL, within 14 days from the date of the Board’s Order, remove from our files all references to the unlawful discharges of Bryan Smith, Darnell Coulbourne, Phil Burton, and Joseph Campbell, and WE WILL, within 3 days thereafter, notify them in writing that this has been done, and that the unlawful discharges will not be used against them in any way.

MARY CANNON T/A ENVIRO-TECH